IN THE HIGH COURT OF UTTARANCHAL AT NAINIAL

Writ Petition No. 5885 (M/S) 2001

(Old No. 38380 of 1994)

Sri Prem Bansal …….. Petitioner

Vs.

Estate Officer/Prescribed Authority,

And others …… Respondents

Hon'ble P.C. Verma,J.

Heard Sri Arvind Vashisth, learned counsel for the petitioner and Sri J.C. Joshi learned counsel for the respondent.

This writ petition has been filed by the petitioner challenging the amendment sought to be made in the plaint filed by the lessee, in due course, before the Prescribed Authority. The learned Prescribed Authority under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the Act) has allowed the application. The petitioner has challenged that order of allowing the amendment on the ground that in view of Section 8 of the Act, the Prescribed Authority has no jurisdiction to allow the amendment application as the provisions of the Code of Civil Procedure have not been applicable by prescribing any rule therefore.

No doubt, Section -8 of the Act provides for application of Code of Civil Procedure in (a) summoning and enforcing the attendance of any person and examining him on oath, (b) requiring the discovery and production of documents and (c) any other matter which may be prescribed.

Clause-C of Section-8 has been inserted by amended Act 61 of 1980. It appears that the rules have not been amended in conformity of the object sought to be achieved by insertion of Clause-C in Section -8of the Act.

Explanation appended of Section 141 of the Code of Civil Procedure clearly approves application of provisions of Code of Civil Procedure in writ petitions but the Apex Court has not applied the provisions contained the principle Section or Order under the Code of Civil Procedure in the writ proceedings. so that justice may be done to the parties. The amendment sought was that the lease of the petitioner

has expired and he became unauthorised occupants, which is relevant ground for the purpose of initiating the proceedings under the Act. Therefore, the Prescribed Authority, which is also tropics of the Court, can allow such amendment.

I do not find any infirmity in the order impugned. The petition is dismissed. No order as to costs.

Even otherwise the order is appealable one, the petitioner has not availed the remedy in which it is provided that every order passed by the Prescribed Authority is appealable. In that way also the petition is liable to be dismissed.

(P.C. Verma,J.)

October 15, 2003:
NCM